IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/11/2003

CORAM

THE HONOURABLE MR. JUSTICE P.D.DINAKARAN

C.M.S.A.No.21 of 2000 and C.M.S.A. 22 of 2000

A.V.R.M.V.Sankaranayanan
Mudaliar Physical and Cultural
Society Trust rep. by its
Managing Trustee, S.Savithiri
W/o.A.V.R.M.V.Sankaranarayana
Mudaliar, No.9, Agasthiar East
Street, Ambasamudram. .. Appellant
in both appeals
-Vs-

The Special Tahsildar
for Land Acquisition
Adi Dravida Welfare
Cheranmahadevi
Ambasamudram Taluk. .. Respondent
in both appeals

PRAYER: Against the judgments and decrees dated 26.4.1999 made in C. M.A.Nos.12 and 11 of 1996 respectively, on the file of the Subordinate Judge, Ambasamudram which is filed against the award passed by the Special Tahsildar for Land Acquisition and Adi Dravidar, Cheranmahadevi, Ambasamudram Taluk.

!For Appellant : Mr.M.S.Subramanian

^For Respondent : Mr.Sivasanmugham
Government Advocate

:JUDGMENT

These appeals were admitted by this Court on the following substantial questions of law:

(i) Having held that the lands are to be valued as house sites, are the potentialities to be considered for fixing the market value of lands?

(ii) Is the Sub Judge correct when it says that it would be proper to fix the value of lands at twice the value fixed by the LAO without arriving at the proper market value as an amount?

2. In brief, the lands of an extent of 0.56.0 Hectares (Ac.1.28) in Survey No.347 in C.M.S.A.No.21 of 2000, and an extent of 0.61.0 Hectares (Ac.1.50) in Survey No.348/2B in C.M.S.A.No.22 of 2002, both located in Keezha Ambasamudram Village and belonging to the appellant were acquired under the land acquisition proceedings under a notification dated 17.11.1995 for the purpose of providing house sites to adi dravidars and a compensation was awarded to the appellant at Rs.363.63 per cent as per award No.40/95-96, dated 28.3.1996. However, the said award was enhanced to a sum of of Rs.727/- per cent by the learned Sub Judge, Ambasamudrram by an order dated 26.4.1999 in C.M.A.Nos.12 and 11 of 1996 respectively. Aggrieved by the said award dated 26.4 .1999, the appellant has preferred the above appeals on the core contention that the learned Sub Judge, Ambasamudram failed to consider Ex.A1, the sale deed relied upon by the appellant for the sale of 749 cents (2.5 Ares) at the rate of Rs.4666/- per cent and the said land sold under the sale deed is located very adjacent to the land of the appellant located in Survey Nos.347 and 348/2B at Keezha Ambasamudram Village.

3. Mr.S.Sivashanmugham, learned Government Advocate invited my attention to the reasons that weighed the learned Sub Judge, Ambasamudram that Ex.A1 is related to the housing plot whereas the lands acquired from the appellant are dry lands.

4. Of course, while the appellant proposed to mark additional documents at this stage under Order 41 Rule 27, the learned Government Advocate also sought permission of this Court to file additional documents with respect to the sale of adjacent dry lands.

5. A careful perusal of the decree and judgment dated 26.4.1999 made in C.M.A.Nos.12 and 11 of 1996 respectively shows that except observing that the land covered under Ex.A1 is a housing plot no other reason was weighed by the learned Sub Judge, Ambasamudram while rejecting the said document with respect to the identification, location, accessibility and other comparative facilities of the properties concerned, which requires oral evidence apart from documentary evidence proposed to be produced by either sides.

6. In that view of the matter, I am inclined to set aside the order dated 26.4.1999 made in C.M.A.Nos.12 and 11 of 1996 respectively and remit the matter to the learned Sub Judge, Ambasamudram with a direction to dispose of the appeals within ninety days from the date of receipt of copy of this judgment, permitting the appellant and the respondent to file additional documents within thirty days. The C.M.P. Nos.14947 and 14867 of 2002 are ordered to the extent that the additional documents sought to be produced may be returned to the parties concerned to be presented before the learned Sub Judge, Ambasamudram for marking the same as documentary evidence.

7. In view of the order of remand, the appellant is entitled for the refund of the court fee as per Section 67 of the Tamil Nadu Court Fees Act.

In the result, these appeals are allowed. No costs.

Index: Yes

Internet:Yes

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To:

The Subordinate Judge
Ambasamudram.